

EXHIBIT 1

REDACTED

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

FAIR ISAAC CORPORATION,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY, and
ACE AMERICAN INSURANCE COMPANY

Defendants.

Case No. 16-CV-1054(WMW/DTS)

**EXPERT REPORT OF
NEIL J. ZOLTOWSKI
WITH RESPECT TO DAMAGES**

Respectfully submitted this 19th day of April, 2019



CONFIDENTIAL – ATTORNEYS' EYES ONLY

was comprised of fourteen (14) directors as of December 2014.⁴⁹ After the Acquisition in January 2016, only three (3) of these fourteen (14) legacy Chubb Corp directors joined the Chubb Limited board, which increased from seventeen (17) in December 2015 to sixteen (16) members in December 2016.⁵⁰ All of the remaining thirteen are legacy ACE Limited directors.⁵¹ (See **Schedule 17.0**).

v. A Single Economic Unit

a) *Consolidation of Federal and ACE American Financial Statements*

30. The financial results of Defendants, the corresponding subsidiaries of both, and the related Chubb entities are consolidated with Chubb INA Holdings, Inc. and Chubb Limited (i.e., the ultimate parent) to reflect that the combinations of parents plus subsidiaries are, in fact, a single economic unit. The Financial Accounting Standards Board (“FASB”), the authoritative accounting organization in the United States, requires that subsidiaries are consolidated with parent companies because financial statements are intended to reflect the economic realities of businesses. These economic relationships are defined by the parent’s corporate structure and financial interest (e.g., percent ownership) in each subsidiary.⁵² With respect to Defendants, both Federal and ACE American are currently direct (Federal) and indirect (ACE American) subsidiaries of Chubb INA Holdings, Inc., and both are also parents of several subsidiaries, all of which roll up and are reported in total with Chubb Limited.⁵³

31. The FASB guidance on consolidation states that a controlling financial interest is a “condition pointing toward consolidation” of the financial results of a parent and subsidiary.⁵⁴ One reason is that consolidated financial statements disclose information about the assets and liabilities

⁴⁹ FICO0056279-294 at 292 (Chubb Corporation Annual Report 2014).

⁵⁰ FICO0056295-556 at 317, 336 (Chubb Limited Annual Report 2015); FICO0056279-294 at 292 (Chubb Corporation Annual Report 2014); ACE Limited Annual Report 2014 at 22; FICO0056861-7120 at 6910 (Chubb Limited Annual Report 2017). Sheila Burke, James Cash and James Zimmerman were the legacy Chubb Corp members.

⁵¹ ACE Limited Annual Report 2014 at 22; FICO0056861-7120 at 6910 (Chubb Limited Annual Report 2017).

⁵² FASB Accounting Standards Codification 810 – Consolidated Financial Statement Scope and Scope Exceptions 810-10-15-8. According to FASB, a subsidiary is an entity in which the parent company has a controlling financial interest (e.g., either through voting rights or other means such as variable interests).

⁵³ See, generally, Taylor Deposition at Exhibit 40 (Chubb Limited 2017 Form 10-K Exhibit 21.1).

⁵⁴ FASB Accounting Standards Codification 810 – Consolidated Financial Statement Scope and Scope Exceptions 810-10-15-8.

(e.g., investments, cash, revenue and debt) of a parent and its subsidiaries. This allows the parent company to present a holistic view of its financial position and operational results. According to FASB, consolidated, as opposed to individual, financial statements are necessary to provide owners and creditors a more meaningful and fair representation of the parent company.⁵⁵

32. In addition to the reporting requirements promulgated by FASB, the National Association of Insurance Commissioners (“NAIC”) also requires reporting entities to disclose their subsidiaries on at least a quarterly basis. Specifically, I understand an entity’s NAIC annual statement identifies the reporting entity’s parent, subsidiaries and affiliates. The NAIC annual statement also summarizes the financial performance and operational results (e.g., premiums, cash flow, losses) of the reported entity in a consolidated manner with its subsidiaries and affiliates.⁵⁶ This consolidation of financial results is similar to the accounting reporting requirements promulgated by FASB, which suggests that they serve similar purposes to consolidation for external financial reporting.

b) *Parent and Subsidiary Relationships*

33. Before the Acquisition, Federal had eleven (11) domestic and eight (8) foreign subsidiaries that Chubb Corp reported on a consolidated basis in 2014.⁵⁷ All except one (1) were wholly-owned by Federal, and of these nineteen (19) subsidiaries, I understand several wrote and issued insurance policies with applications using Blaze Advisor between 2013 and 2019. (See **Schedules 12.0, 14.1 and 14.2**).

34. Since the Acquisition, Chubb Limited’s financial statements have included the financial results of both Federal and ACE American.⁵⁸ Federal has seven (7) domestic and five (5) foreign subsidiaries that Chubb Limited reports on a consolidated basis in 2018.⁵⁹ All except one (1) are

⁵⁵ FASB Accounting Standards Codification 810 – Consolidated Financial Statement, Overall General 810-10-10-1 and 810-10-45-1.

⁵⁶ See, generally, 2016 Federal NAIC Annual Statement at 14.5-14.7.

⁵⁷ Taylor Deposition at 18, 74 and Exhibit 18 (The Chubb Corporation 2014 Form 10-K at 3 and 4) and Exhibit 35 (FED000059_001-002 at 001).

⁵⁸ See, generally, FICO0056861-7179 at 6950, 6954 and 7049.

⁵⁹ Federal Insurance Company Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 8; Taylor Deposition at 18-19, 74, 81-85, Exhibit 32 (FED013551_001-012 at 001-002), Exhibits 18 (The Chubb Corporation 2014 Form 10-K at 3 and 4) and Exhibit 37 (FED000058_0001-12 at 006).

wholly-owned by Federal, and of these twelve (12) subsidiaries, several wrote and issued insurance policies with applications using Blaze Advisor between 2016 and 2019. (See **Schedules 12.0, 14.3, 14.4 and 14.5**).

35. Similarly, ACE American has fourteen (14) domestic and two (2) foreign entities that Chubb Limited reports on a consolidated basis in 2018.⁶⁰ All are wholly-owned by ACE American, and of these sixteen (16) subsidiaries, several wrote and issued insurance policies with applications using Blaze Advisor between 2016 and 2019. (See **Schedules 12.0, 15.1, 15.2 and 15.3**).

c) *Pooling Agreements*

36. The pooling arrangements between Defendants and the members of their pools also demonstrate that these groups of entities are a single economic unit rather than independent businesses. Pooling arrangements are characterized by the sharing of premiums, losses and expenses among a group of participant companies, and I understand that the terms are typically memorialized by an intercompany agreement describing the pool.⁶¹ In fact, most of the pool members for both ACE American and Federal are also their wholly-owned subsidiaries. (See **Schedule 16.0**).

37. I understand from Bick Whitener, FICO's industry expert, that insurance companies operating under a pooling agreement function as a single business with the insurance company identified as the pool leader at the head. According to Mr. Whitener, the lead company (e.g., Federal) is typically responsible for staffing, planning, executing, and monitoring of the business model of the member companies, aggregating the financials of each individual pool member into a consolidated set of financials and then allocating the elements of the consolidated financials back to the pool members based on the agreed allocations per the pooling agreement.

38. Pooling agreements are used within a group of insurance companies to allow shared services (e.g., IT, HR, finance/accounting, underwriting) to be staffed and managed by the pool leader but paid for by the pool members in concert with the previously mentioned allocation method defined in the pooling agreement. Further, the pooling agreement allows individual

⁶⁰ See **Schedule 15.3**.

⁶¹ A.M. Best Methodology, "Rating Members of Insurance Groups," December 15, 2014, at 7; INA Holdings, Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 30; Interview of Bick Whitener.

companies to satisfy, among other requirements, the regulatory requirements of each state where it wants to do business (e.g., filing of product definitions such as rates, rules, and forms with a state's Department of Insurance) and to allow the members of the pool to offer specific insurance products. I understand that each state where the lead wants to offer insurance requires a state-specific Certificate of Authorization for which the entity must satisfy certain criteria (e.g., surplus requirements, solvency ratios). I understand that the aggregated financial assets of the pool are allocated back to the pool member in order to satisfy these requirements, including the "premium to surplus" ratio, an indicator of the company's ability to pay policy-holder claims and remain solvent.⁶²

39. According to Mr. Whitener, even though each insurance policy is underwritten by an individual writing company and displays that individual writing company's name on the policy Declarations page, the policy is ultimately managed, serviced and insured by the pool's lead company's assets (e.g., human capital, financial assets and otherwise) rather than any individual insurance company within the pool. In this way, the pool lead and members function as a single business unit despite the number of individual writing companies that comprise the pool.⁶³

(1) Pre-Acquisition Pools

40. Before the Acquisition, Chubb Corp participated in intercompany pooling arrangements involving Federal and ten Federal subsidiaries.⁶⁴ I understand all but one (1) of Federal's eleven (11) domestic subsidiaries in 2014 participated in this intercompany pool or were "fully reinsured by pool members."⁶⁵ A.M. Best described these eleven (11) subsidiaries plus three (3) foreign

⁶² Interview of Bick Whitener.

⁶³ Interview of Bick Whitener

⁶⁴ A.M. Best, "YE 2015 Federal Insurance Company (002084) Best's Credit Report Archive, Business Profile for Chubb Corp; Audited Consolidated Financial Statements – Statutory Basis Consolidated Information – Statutory Basis Supplemental Disclosures, The Chubb Corporation U.S. Property and Casualty Insurance Group, Years Ended December 31, 2014 and December 31, 2013 at 25.

⁶⁵ FED000059_0001-0002 at 0002; A.M. Best, "YE 2015 Federal Insurance Company (002084) Best's Credit Report Archive, Business Profile for Chubb Corp. Only Chubb Investment Holding, Inc. did not participate in the pooling arrangement. The three companies reinsured by pool members included Chubb Insurance Company of New Jersey, Texas Pacific Indemnity Company, and Chubb Lloyds Insurance Company of Texas (i.e., domestic Federal affiliate).

Federal subsidiaries as “strategic to the overall [Chubb] group strategy.”⁶⁶ (See **Schedules 14.2 and 16.0**).

41. Consistent with these pooling arrangements, Federal, through its division Chubb & Son, provided services to Federal and other members of the pool. These services were memorialized in a series of service agreements, and I understand Chubb & Son and certain Federal subsidiaries shared expenses and liabilities involved in writing and issuing insurance policies.⁶⁷

42. ACE American also participated in pooling arrangements with several ACE Limited subsidiaries.⁶⁸ All of the ACE Limited’s subsidiaries domiciled in Pennsylvania (including ACE American) participated in the “ACE USA underwriting pool,” and the remaining subsidiaries outside of Pennsylvania ceded “essentially all of their underwriting results” to the pool through “quota share agreements.”⁶⁹ INA Holdings’ (ACE Limited’s parent) financial position, results of operations and cash flows were represented by the combined results of these subsidiaries.⁷⁰

(2) Post-Acquisition Pools

43. Federal continued to participate in the “Federal Pool,” which included Federal plus eight (8) of its subsidiaries.⁷¹ Two (2) more Federal subsidiaries participated in a reinsurance agreement in which each ceded “100% of its business to Federal” or Great Northern, a Federal subsidiary that participates in the Federal Pool.⁷² (See **Schedule 16.0**).

⁶⁶ The Federal foreign subsidiaries included: Chubb Insurance Company of Europe SE, Chubb Insurance Company of Canada and Chubb Insurance Company of Australia Limited.

⁶⁷ Taylor Deposition at Exhibit 28 (FED013554_0001-002 at 001); Taylor Deposition at Exhibit 29 (FED013553_0001-004 at 001 and 003); Taylor Deposition at Exhibit 30 (FED013538_0001-0005 at 001 and 004); Taylor Deposition at Exhibit 31 (FED013552_0001-013 at 001-002, 004, 006); Taylor Deposition at Exhibit 32 (FED013551_0001-012 at 001 and 003).

⁶⁸ INA Holdings, Combined Statutory Financial Statements, December 31, 2015 and December 31, 2014 at 7.

⁶⁹ INA Holdings, Combined Statutory Financial Statements, December 31, 2015 and December 31, 2014 at 7. A quota share agreement is a “prorata reinsurance contract in which the insurer and reinsurer share premiums and losses according to a fixed percentage. (<https://www.investopedia.com/terms/q/quota-share-treaty.asp>).

⁷⁰ INA Holdings, Combined Statutory Financial Statements, December 31, 2015 and December 31, 2014 at 7.

⁷¹ Federal Insurance Company Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 26-27.

⁷² Federal Insurance Company Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 26-27.

44. The Federal Pool was terminated as of January 1, 2018 but was “replaced by [a] new Chubb Intercompany Pool and Quota Share reinsurance agreements” (the “Chubb INA Pool”).⁷³ Consistent with its ratings methodology, A.M. Best gave all of Chubb Limited’s U.S. subsidiaries, including Federal and ACE American, the same “Rating,” “Outlook,” and “Action” effective December 2018.⁷⁴

45. ACE American continued to participate in the “ACE USA underwriting pool” after the Acquisition and kept the same general relationships with the pool members domiciled inside and outside of Pennsylvania.⁷⁵ The ACE USA underwriting pool was ultimately terminated and replaced by new the Chubb INA Pool.⁷⁶ These companies’ combined results of operations and cash flows continued to represent the financial position of INA Holdings, and all of these companies were indirect wholly-owned subsidiaries of Chubb INA Holdings and/or Chubb Limited as of year-end 2017.⁷⁷ (See **Schedule 16.0**).

46. ACE American also replaced Chubb & Son and now provides the same services to Federal, Federal’s subsidiaries and members of the Chubb INA Pool (formerly Federal and ACE American underwriting pools) as described in the new service agreements.⁷⁸

⁷³ Federal Insurance Company Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 26-27; Federal Insurance Company Annual Statement, December 31, 2018 at 14.33; ACE American Insurance Company Annual Statement, December 31, 2018 at 14.38.

⁷⁴ Best’s Credit Ratings for Group Members, Chubb U.S. Group of Ins Cos (000012); A.M. Best Methodology, “Rating Members of Insurance Groups,” December 15, 2014, p. 7. A.M. Best typically assigns “the same rating and Financial Size Category, based on their consolidation.”

⁷⁵ INA Holdings, Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 7. The list of subsidiaries in 2017 excluded Bank Standard Fire and Marine Company, which merged with Bankers Standard Insurance Company.

⁷⁶ Federal Insurance Company Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 26-27; Federal Insurance Company Annual Statement, December 31, 2018 at 14.33; ACE American Insurance Company Annual Statement, December 31, 2018 at 14.38.

⁷⁷ INA Holdings, Combined Statutory Financial Statements, December 31, 2017 and December 31, 2016 at 7,11; Taylor Deposition at Exhibit 40 (Chubb Limited 2017 Form 10-K Exhibit 21.1). Texas Pacific Indemnity merged with Pacific Indemnity reducing the number of pool members. Northwestern Pacific Indemnity was sold effective February 12, 2014, which also reduced the number of pool members post-acquisition.

⁷⁸ Taylor Deposition at Exhibit 28 (FED013554_0001-002 at 001); Taylor Deposition at Exhibit 29 (FED013553_0001-004 at 001 and 003); Taylor Deposition at Exhibit 30 (FED013538_0001-0005 at 001 and 004); Taylor Deposition at Exhibit 31 (FED013552_0001-013 at 001-002, 004, 006); Taylor Deposition at Exhibit 32 (FED013551_0001-012 at 001 and 003).

d) *Consolidated Income Tax Returns – Post Acquisition*

47. Consistent with Defendants' subsidiary and pooling relationships, since January 1, 2017, Federal and ACE American's federal income tax returns are consolidated with each other, Chubb INA Holdings, Inc., and INA Holdings, Inc., among others.⁷⁹ This consolidated U.S. tax return is inclusive of the direct and indirect subsidiaries of Chubb Group Holdings, Inc., a wholly-owned subsidiary of Chubb Limited.⁸⁰

48. I understand that the Internal Revenue Service allows, but does not require, corporations to file a consolidated tax return with their subsidiaries.⁸¹ The choice to file in a consolidated manner is similar to the accounting reporting requirements promulgated by FASB, which suggests that a corporation and its legal entities are to be viewed in singularity, even if the corporation achieves its business objectives through multiple entities. Additionally, corporations can file a consolidated tax return only if certain stock ownership and voting requirements are satisfied and each subsidiary has consented and authorized its inclusion in the consolidated return.⁸²

49. A consolidated federal corporate tax return (i.e., Form 1120) combines the financial operations of each entity together to arrive at a single taxable income figure.⁸³ I understand there are several advantages to a consolidated tax return, including the ability to offset the losses of one entity with the profits of another entity.⁸⁴

e) *Economic Benefits of Single Economic Unit*

50. Defendants benefit economically from the operations of their writing company subsidiaries and writing company entities in their pooling arrangements. The economic reality is that the Defendants, their subsidiaries, and their pooling entities are a single economic unit rather than

⁷⁹ ACE American Insurance Company, Annual Statement, December 31, 2017 at 14.8-14.9.

⁸⁰ ACE American Insurance Company, Annual Statement, December 31, 2017 at 14.9-14.10; FED000058_0001-0012 at 0002, 0004.

⁸¹ See, generally, 26 U.S. Code Subchapter A – IRC § 1501 Privilege to File Consolidated Returns (<https://www.law.cornell.edu/uscode/text/26/1501>).

⁸² See, generally, 26 U.S. Code Subchapter A – IRC § 1501 Privilege to File Consolidated Returns (<https://www.law.cornell.edu/uscode/text/26/1501>); 26 U.S. Code Subchapter A – IRC § 1504 Definition (<https://www.law.cornell.edu/uscode/text/26/1504>).

⁸³ See, generally, 26 U.S. Code Subchapter A – IRC § 1503 Computation and Payment of Tax (<https://www.law.cornell.edu/uscode/text/26/1503>).

⁸⁴ See, generally, 26 U.S. Code Subchapter A – IRC § 1552 Earnings and Profits (<https://www.law.cornell.edu/uscode/text/26/1552>).

independent businesses. Specifically, Defendants acknowledge this economic reality by reporting to the NAIC on a consolidated basis and by filing consolidated federal income tax returns. Accordingly, Defendants, their subsidiaries, and their pooling entities are, in turn, part of a larger single economic unit consolidated with Chubb INA Holdings, Inc.

B. Software License and Maintenance Agreement

i. Original Agreement

51. On June 30, 2006, FICO and Chubb & Son, a division of Federal, entered into a non-exclusive, perpetual software license and maintenance agreement granting rights to use Blaze Advisor (“SLM Agreement”) in conjunction with CSI eXPRESS (defined below) in the United States.⁸⁵ The SLM Agreement granted Chubb & Son a Blaze Advisor “Named Application” license for the “CSI Express application (which is Chubb’s Specialty Insurance’s underwriting and automated policy renewal application) and its supporting systems, applications...” for a one-time fee of [REDACTED].⁸⁶

52. The SLM Agreement also included annual support and maintenance fees of [REDACTED] [REDACTED], in exchange for certain services involving Blaze Advisor.⁸⁷ The SLM Agreement also contemplated that FICO would continue to support Chubb & Son and maintain Blaze Advisor going forward for the same amount per year.⁸⁸

53. In addition, the SLM Agreement included two options for Chubb & Son to expand its licensed usage. One option was a one-month option to expand the scope from a “Named Application” to a “Divisional ELA” license for “use within [Chubb & Son]’ Specialty Lines insurance division” for an additional deployment license fee of [REDACTED]. Under the terms of the Divisional ELA, FICO granted Chubb & Son ten (10) development seats

⁸⁵ Deposition of Russel Schreiber, dated October 24, 2018 (“Schreiber Deposition”) at Exhibit 110 (FICO0001702-722 at 702, 712, 714). Territory as defined in the SLM Agreement is “with respect to the installation and physical location” of FICO’s products.

⁸⁶ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 702, 712); Deposition of William Paul Waid, dated January 16, 2019 (“Waid 1/16/19 Deposition”) at 87.

⁸⁷ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 702, 704, 712).

⁸⁸ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 712-715).

⁸⁹ Schreiber Deposition at Exhibit 110 (FICO0001702-722 at 712). I understand that ELA is acronym for Enterprise License Agreement.